

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 2, 2002

IN RE:

BELLSOUTH TARIFF TO INTRODUCE A
LATE PAYMENT CHARGE IN THE
GENERAL SUBSCRIBER SERVICES
TARIFF AND INCREASE THE EXISTING
LATE PAYMENT CHARGE IN THE
PRIVATE LINE SERVICES TARIFF

DOCKET NO.
01-00840

ORDER APPROVING TARIFF

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at the regularly scheduled Authority Conference held on November 6, 2001, for consideration of *BellSouth Telecommunications, Inc.'s ("BellSouth") Tariff to Introduce a Late Payment Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment Charge in the Private Line Services Tariff ("Tariff")*. BellSouth filed the *Tariff* with the Authority on September 19, 2001 with a proposed effective date of October 19, 2001.

Background

BellSouth initially filed a tariff to introduce late payment charges on August 6, 1999 (Docket No. 99-00574). The Authority suspended the effective date of the *Tariff*, convened a contested case, granted the Consumer Advocate's *Petition to Intervene* and appointed a Pre-Hearing Officer. After several significant discovery disputes, BellSouth filed its *Notice of Withdrawal* of the tariff on December 16, 1999, which was accepted by the Pre-Hearing Officer.¹

¹See *Initial Order of the Hearing Officer*, Docket No. 99-00574 (January 14, 2000).

On January 11, 2000, BellSouth filed a tariff (No. 00-00041) to introduce a three percent (3%) late payment charge in the General Subscriber Services Tariff ("GSST") and to increase the existing late payment charge in the Private Line Services Tariff ("PLST") from one and one-half percent (1.5%) to three percent (3%). On February 14, 2000, the Consumer Advocate and Protection Division ("Consumer Advocate") filed a Complaint or Petition to Intervene in Tariff 00-00041 ("Petition to Intervene").

In the Petition to Intervene, the Consumer Advocate specifically alleged the following regarding BellSouth's tariff (No. 00-00041):

- (1) that said tariff unlawfully seeks to add additional recurring or non recurring late payment charges to the compensation BellSouth is already receiving;
- (2) that said tariff is neither just or reasonable;
- (3) that said tariff is unjustly discriminatory because it reduces rates for business customers but does not reduce rates for residential customers;
- (4) that the late charge proposed in the tariff exceeds an amount that is just and reasonable and is both a penalty prohibited by Tenn. Code Ann. § 65-4-122 (b) and a double payment to BellSouth of the premium already included in its rates for late charges;
- (5) that consumers and localities are irreparably harmed by the unjust discrimination, the penalty and the amount of the charge that exceeds a just and reasonable rate as proposed in tariff 00-00041; and
- (6) that BellSouth tariff 00-00041 is contrary to public policy.²

At the Authority Conference held on February 15, 2000, the Authority suspended the effectiveness of Tariff 00-00041 and appointed a Pre-Hearing Officer who considered the issues raised in the Consumer Advocate's Petition to Intervene and granted the Consumer Advocate's Petition to Intervene on March 15, 2000.

After significant discovery disputes, several pre-hearing conferences and appeals of initial orders, BellSouth decided to withdraw its tariff in Docket No. 00-00041. On September 19, 2001, BellSouth filed Tariff No. 01-00840 to introduce a late payment charge in the GSST

² *Complaint, or Alternatively, Petition to Intervene and Petition for Stay*, Docket No. 00-00041 (February 14, 2000), pp. 4-6.

and to increase the existing late payment charge in the PLST.³ In its cover letter for Tariff No. 01-00840, BellSouth notified the Authority that, upon approval of Tariff No. 01-00840, BellSouth would withdraw its filing in Docket No. 00-00041 in its entirety. Subsequently, on September 27, 2001, BellSouth notified the Authority of its desire to withdraw its tariff in Docket No. 00-00041 immediately, notwithstanding any action regarding Tariff No. 01-00840 which was filed in Docket No. 01-00840.⁴

At the Authority Conference held on October 9, 2001, the Authority approved BellSouth's withdrawal of the tariff in Docket No. 00-00041.⁵ At that Conference, the Consumer Advocate informed the Authority that it would not intervene in Docket No. 01-00840, and that the Authority should not consider its decision not to intervene as support for the tariff. With respect to BellSouth's Tariff No. 01-00840, the Authority voted to take administrative notice of Docket No. 00-00041 and to suspend the effective date of the Tariff for thirty (30) days.

Findings and Conclusions

BellSouth's *Tariff* seeks to introduce an explicit late payment charge in the GSST and to increase the rate of the existing late payment charge in the PLST. The *Tariff* provides for a two percent (2%) late payment charge for residential customers⁶ and a three percent (3%) late payment charge for business customers. The late payment charges will be applied to overdue amounts for regulated telecommunications services provided by BellSouth.⁷ In addition, the

³ BellSouth proposed an effective date of October 19, 2001 for Tariff 01-00840.

⁴ Letter from Charles L. Howorth, Jr., Regulatory Vice President, BellSouth Telecommunications, Inc. to Joe Werner, Telecommunications Division Chief, Tennessee Regulatory Authority, *Tariff Filing for Rate Group Five Grouping Reductions and Late Payment Charge*, (Sept. 26, 2000).

⁵ See *In Re: Tariff Filing Of Bellsouth Telecommunications, Inc. To Reduce Grouping Rates In Rate Group 5 And To Implement A 3% Late Payment Charge*, Docket No. 00-00041, *Order Accepting and Approving Withdrawal of Tariff*, (Jan. 23, 2002).

⁶ The late payment charge for residential customers is limited to one and one-half percent (1.5%) during the first year following the effective date of the *Tariff*.

⁷ *Id.*

charges will be applied to overdue amounts for regulated telecommunications services provided by a third-party carrier if: (1) a valid tariff exists permitting the particular third-party to charge the late fee; or (2) the contract between the customer and the particular third-party provides for the late fee; or (3) BellSouth has given notice to customers.⁸ Except as noted below, late payment charges will be applied to the unpaid balance of each customer's bill when the previous month's bill has not been paid in full prior to the next billing date. Late payment charges will not be applied to: (1) the accounts of Lifeline⁹ customers; (2) charges for prepaid services unless such charges remain unpaid on the next bill date;¹⁰ (3) charges for which the customer has had less than twenty-one (21) days to pay; (4) specific charges that are disputed by the customer; and (5) previous unpaid late payment charges. The *Tariff* also provides that customers will not be denied service or terminated from service solely because of nonpayment of late payment charges.¹¹

BellSouth proposes these rate increases pursuant to its price regulation plan. Tenn. Code Ann. § 65-5-209(h) allows incumbent local exchange companies ("ILECs") operating pursuant to a price regulation plan, and upon prior notice to affected customers, to price non-basic telecommunications services as they deem appropriate according to a statutory formula as long as total revenues in the non-basic category do not exceed the revenue cap,¹² subject to the non-

⁸ *Id.* BellSouth typically purchases the third-party accounts of its customers from third-party carriers.

⁹ "Lifeline" is a low income assistance program, available to qualified residential subscribers, which reduces monthly charges for local service through credits supported by federal and Company funds. See BellSouth Telecommunications, Inc., Tennessee, *General Subscriber Services Tariff, Definition of Terms, Lifeline A1*, Eighth Revised Page 10, (Issued Sep. 19, 2001) (Effective Nov. 6, 2001).

¹⁰ Local exchange service is a prepaid service.

¹¹ It is consistent with the foregoing provisions that the imposition of late payment charges to a particular customer will not be reported by BellSouth to any entity generating a credit report for that BellSouth customer.

¹² The revenue cap is described in Tenn. Code Ann. § 65-5-209(e) and (g) (Supp. 2001).

discrimination provisions of Title 65 and any rules or orders issued by the Authority pursuant to Tenn. Code Ann. § 65-5-208(c) (Supp. 2001).

A threshold issue in this matter is whether the late payment charges proposed by BellSouth in this *Tariff* constitute telecommunications services. Services that are inextricably linked to the provisioning of telecommunications are appropriately considered telecommunications services. Telecommunications companies provide telecommunications services in many ways, including billing and collection.¹³ BellSouth currently has a late payment charge that is tariffed in the PLST,¹⁴ and it has a returned check charge that is tariffed in the GSST to recover costs associated with carrying and collecting dishonored checks.¹⁵

The late payment charges proposed in BellSouth's *Tariff* may only be charged subsequent to the provision of other telecommunications services. Similar to non-recurring installation charges, the late payment charges proposed in BellSouth's *Tariff* cover additional costs that are customer specific. The late payment charges proposed in BellSouth's *Tariff* provide a mechanism whereby customers who fail to pay their bills in a timely manner may continue to receive other telecommunications services. Thus, the proposed late payment charges are inextricably linked to the provisioning of other telecommunications services and therefore constitute telecommunications services for regulatory purposes.

As noted, Tenn. Code Ann. § 65-5-209(h) allows ILECs to price non-basic telecommunications services as they deem appropriate subject to a statutory formula and subject

¹³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd. 15499 (August 8, 1996).

¹⁴ See *Private Line Services Tariff, Regulations, Payment Arrangements and Credit Allowances, Payment of Charges and Deposits* B2.4.1.E, BellSouth Telecommunications, Inc., Second Revised Page 7, (Issued Dec. 19, 1997) (Effective Jan. 23, 1998).

¹⁵ See *General Subscriber Services Tariff, General Regulations, Payment Arrangements and Credit Allowances, Payment for Service* A2.4.3.F, BellSouth Telecommunications, Inc., Seventh Revised Page 14 (Issued Sep. 7, 1999) (Effective Oct. 7, 1999).

to certain statutory and regulatory exceptions.¹⁶ Therefore, a second threshold issue in this matter is whether the late payment charges proposed in the *Tariff* constitute charges for non-basic services.

Tenn. Code Ann. § 65-5-208(a)(1) defines “basic local exchange telephone services” as:

telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995, or other services required by state or federal statute.¹⁷

The late payment charges proposed in the *Tariff* are not specifically listed in this definition and are not otherwise required by state or federal statute. The late payment charges proposed in the *Tariff* can not be correlated with “essential” services for customers because customers may avoid paying late payment charges with timely payment of their bills¹⁸ and because BellSouth’s *Tariff* also provides that customers will not be denied service or disconnected from service for nonpayment of late payment charges alone.

Tenn. Code Ann. § 65-5-208(a)(2) defines “non-basic services” as “telecommunications services which are not defined as basic local exchange telephone services and are not exempted under subsection (b) [*i.e.*, Tenn. Code Ann. § 65-5-208(b)].”¹⁹ Therefore, because the late payment charges proposed in BellSouth’s *Tariff* are not defined as basic local exchange telephone services, are not exempted under subsection (b) of Tenn. Code Ann. 65-5-208(b), and can not be correlated with essential services, they constitute charges for non-basic

¹⁶ See Tenn. Code Ann. § 65-5-209(h).

¹⁷ The statute requires these services to be provided at the same quality level as was being provided on June 6, 1995 and states that rates for these services shall include both recurring and non-recurring charges. See Tenn. Code Ann. § 65-5-208(1) (Supp. 2001).

¹⁸ In *United Telephone-Southeast, Inc. v. Tennessee Regulatory Authority*, No. M1999-02801-COA-R12-CV, 2001 WL 266051 (Tenn. App. March 20, 2001) (*cert. denied*, Sep. 10, 2001) the Tennessee Court of Appeals concluded “that the legislature intended that ‘basic’ services have some correlation to ‘essential’ services.” See *id.* at 3.

¹⁹ The statute also states that rates for these services shall include both recurring and non-recurring charges. See Tenn. Code Ann. § 65-5-208(2) (Supp. 2001).

telecommunications services.

Having found that the late payment charges proposed in BellSouth's *Tariff* constitute charges for non-basic telecommunications services, the Authority must next address the issue of whether BellSouth may apply and collect the late payment charges from the customers of third-party carriers. Where the late payment charges proposed in BellSouth's *Tariff* are proposed to be applied to delinquent third-party accounts, BellSouth, rather than the third-party carrier, will provide the late payment service on which the charges are based. The late payment service will provide customers with delinquent accounts the continued capability to place and receive telephone calls, including long distance calls. BellSouth will accept the risk and incur the costs associated with continuing service to customers who have delinquent accounts. Based on the foregoing, BellSouth may apply and collect the late payment charges from the customers of third-party carriers.

Another issue appropriate for determination regarding this *Tariff* is whether the *Tariff* complies with BellSouth's price regulation plan. In making this determination the Authority must determine whether the proposed late payment service is a basic or non-basic service and whether the proposed late payment service is a new service or a revision to an existing service. Having previously found *supra* that the proposed late payment service is a non-basic service, the analysis is narrowed to the issue of whether the proposed late payment service is a new service or a revision to an existing service. The *Tariff* seeks to increase the existing PLST late payment charge from one and one-half percent (1 ½ %) for all customers to two percent (2%) for residential customers and to three percent (3%) for business customers. Therefore, the PLST late payment charge revises an existing service.

Similarly, the GSST late payment charge also proposes a revision to an existing service.

Some customers who purchase GSST services have paid their bills late in the past.²⁰ This fact was taken into consideration and built into BellSouth's rates during the time it was under rate-of-return regulation.²¹ Customers have long received late payment services and BellSouth has received compensation for providing them. Because BellSouth has been providing late payment services since it was under rate-of-return regulation, the Authority finds that these services were being provided at a zero rate when BellSouth's price regulation plan was approved.²² Therefore the *Tariff* proposes a revision to an existing late payment charge in the GSST.

As a price-regulated carrier, BellSouth may generally set rates for non-basic services as it deems appropriate as long as its aggregate revenues do not exceed its revenue cap, which is described in Tenn. Code Ann. § 65-5-209(e).²³ Thus, within the constraints of its price regulation plan, BellSouth generally has the ability and discretion to increase its late payment charges.

To increase the rate of an existing, non-basic service, price regulation²⁴ requires that BellSouth either reduce another rate so as to make the financial impact of the tariff revenue neutral or consume available headroom.²⁵ BellSouth has filed proprietary information in support of the *Tariff* that indicates that the projected new revenues generated by the proposed increase in late payment charges will be less than the amount of headroom that is currently available to BellSouth under its price regulation plan. Thus, the incremental revenues generated by the *Tariff* will consume available headroom. Based on the foregoing, the Authority finds that the *Tariff*

²⁰ Residential and business local exchange services are provisioned from GSST.

²¹ This was accomplished by performing lead/lag studies and using the results to make adjustments to BellSouth's rate base.

²² This finding is consistent with the Authority's determination in TRA Docket No. 99-00391, *BellSouth Telecommunications, Inc. Tariff to Implement a \$0.29 Directory Assistance Charge*. See, Order Approving Tariff and Denying Consumer Advocate Petition (July 29, 1999).

²³ See Tenn. Code Ann. § 65-5-209(h).

²⁴ See Tenn. Code Ann. § 65-5-209 (Supp. 2001).

²⁵ Headroom represents the difference between actual aggregate revenues and aggregate revenues allowable under the formula set forth in Tenn. Code Ann. § 65-5-209(e).

complies with BellSouth's price regulation plan.

The final issue for determination is whether the *Tariff* is contrary to the policy objectives of the Authority. Late payment charges that severely affect the affordability or quality of service should be heavily scrutinized in order to determine whether there is a conflict between the charges and the Authority's policy objective of fostering the development of a system of affordable, high-quality telecommunications services. Nevertheless, late payment charges are not inherently contrary to the public interest. BellSouth incurs additional carrying and collection costs when customers fail to pay for telecommunications services in a timely fashion. It is therefore proper for BellSouth to be allowed to impose reasonable late payment charges for its late payment services provided to customers who pay for telecommunications services after the date payment is due.

The *Tariff* complies with BellSouth's price regulation plan. Because the price regulation statutes are designed to keep rates affordable, just, and reasonable on a going-forward basis, there is a rebuttable presumption that the late payment charges proposed by BellSouth's *Tariff* are affordable. The Authority finds no evidence to rebut this presumption. Additionally, all a customer need do to avoid the late payment charges is to pay the customer's bill on time. Finally, customers who can least afford to pay more for telephone service will not be subject to BellSouth's late payment charges because the *Tariff* specifically excepts Lifeline customers from payment of the proposed late charges. For the foregoing reasons, the Authority finds that the *Tariff* is not contrary to the Authority's public policy objective of fostering the development of affordable, high-quality telecommunications services.

In summary the Authority specifically finds the following:

1. The late payment charges proposed in *BellSouth's Tariff to Introduce a Late Payment Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment*

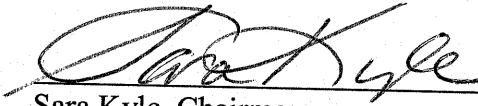
Charge in the Private Line Services Tariff, Docket No. 01-00840, are non-basic telecommunications services.

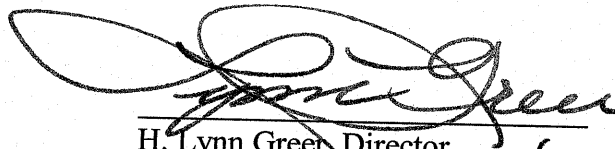
2. BellSouth may apply the proposed late payment charges to delinquent third-party accounts.
3. *BellSouth's Tariff to Introduce a Late Payment Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment Charge in the Private Line Services Tariff*, Docket No. 01-00840, conforms to Tennessee "Price Cap Regulation" statutes governing non-basic services and the statutory price floor as required by Tenn. Code Ann. § 65-5-208.
4. *BellSouth's Tariff to Introduce a Late Payment Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment Charge in the Private Line Services Tariff*, Docket No. 01-00840, complies with BellSouth's price regulation plan.
5. *BellSouth's Tariff to Introduce a Late Payment Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment Charge in the Private Line Services Tariff*, Docket No. 01-00840, is not contrary to the Authority's policy objectives regarding the affordability and quality of service.

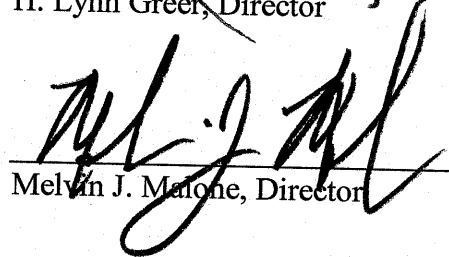
At the Authority Conference held on November 6, 2001 the Directors voted unanimously to approve *BellSouth Telecommunications, Inc.'s Tariff to Introduce a Late Payment Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment Charge in the Private Line Services Tariff* specifically noting that certain provisions that are in the *Tariff* are necessary for the *Tariff* to be in compliance with state law, the rules and regulations of the Authority, and the Tennessee Court of Appeals Decision in *United v. Tennessee Regulatory Authority*, No. M1999-02801-COA-R12-CV, 2001 WL 266051, 2001 Tenn. App. LEXIS 180 (Tenn. App. March 20, 2001) (*cert. denied*, Sep. 10, 2001).

IT IS THEREFORE ORDERED THAT:

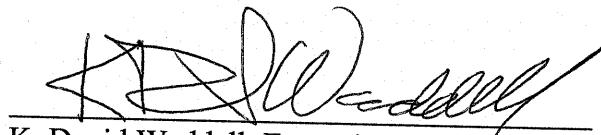
BellSouth Telecommunications, Inc.'s *Tariff to Introduce a Late Charge in the General Subscriber Services Tariff and Increase the Existing Late Payment Charge in the Private Line Services Tariff* is approved.


Sara Kyle, Chairman


H. Lynn Greer, Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary